

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 3 Improper Business Practices

Subject: 3.5 Payments to Influence Federal Transactions

PURPOSE: This standard practice (SP) describes the Prime Contract requirement that prohibits the Laboratory from awarding a subcontract to an offeror who uses federal funds to obtain a Laboratory subcontract.

POLICY: The Laboratory will comply with 31 U.S.C. 1352, *Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions* (the Act), in connection with the award or modification of any Laboratory subcontract.

SCOPE: This SP applies to all subcontracts expected to exceed \$100,000 except for the acquisition of commercial items, components, or commercial services.

DEFINITIONS:

Indian Tribe or Tribal Organization An Indian tribe or tribal organization has the meaning provided in Section 4 of the *Indian Self-Determination and Education Assistance Act* (25 U.S.C 450B) and includes Alaskan Natives.

Person A person is an individual, corporation, company, association, authority, firm, partnership, society, state, or local government, regardless of whether such entity is operated for profit or not-for-profit. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

Professional and Technical Services As used herein, professional and technical services are limited to advice and analysis directly applying to any professional or technical discipline.

Requirements of the Act The Act requires that offerors furnish a declaration consisting of a certification and a disclosure. By signing the offer, the offeror certifies that no appropriated funds have been paid or will be paid in violation of the Act. The disclosure must identify if any funds, other than federal appropriated funds, have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the award or modification of any federal contract or Laboratory subcontract.

Under the Act, payments are permissible to individuals under the following conditions:

- An officer or employee of the subcontractor for agency or legislative liaison activities not directly related to the subcontract;
- An officer or employee of the subcontractor for professional or

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technical services rendered directly in the preparation, submission, or negotiation of a proposal; or

- Someone other than an officer or employee (including consultants and trade associations) for professional or technical services rendered directly in the preparation, submission, or negotiation of a proposal.

Certification and Disclosure

Certification — Solicitations must require offerors to complete and submit the *Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions* clause (FAR 52.203-11) with their offers. This clause is included in the *Representations and Certifications* form available in the Formcab folder located on the Procurement Server.

Disclosure — The subcontractor must file a disclosure form at the end of each calendar quarter in which there is any event that materially affects the accuracy of the information contained in any previous disclosure. Material changes include:

- A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered contract or subcontract;
- A change in the person(s) influencing or attempting to influence a covered contract or subcontract; or
- A change in the officer, employee, or member of Congress contacted to influence or attempt to influence a covered contract or subcontract.

Disclosures must be forwarded from tier-to-tier to the Laboratory. All such disclosures will be submitted to the Procurement Manager, who will forward the reports to the DOE on OMB Standard Form LLL, *Disclosure of Lobbying Activities* (available in the Formcab folder located on the Procurement Server), at the end of each calendar quarter in which the disclosure was submitted to the Laboratory.

Payments to Subcontractors

The Laboratory shall not pay subcontractors any disclosed lobbying costs prohibited by the Act or the Prime Contract.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Obtain and review an executed *Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions* for all subcontracts;
- Submit all applicable disclosure statements to the

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Procurement Manager; and

- Charge back or disallow identified or disclosed lobbying costs.

Procurement Manager

The Procurement Manager must submit all disclosure statements to DOE on OMB Standard Form LLL at the end of the calendar quarter in which the statements were received.

CLAUSES:

Include the *Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions* clause (FAR 52.203-11) in all solicitations.

Include the *Limitation on Payments to Influence Certain Federal Transactions* clause (FAR 52.203-12) in all solicitations and subcontracts.

REFERENCE:

Prime Contract Clause I.8 - Limitation on Payments to Influence Certain Federal Transactions